

Application No. 10/750,402
Response dated November 27, 2006
Reply to Office Action of August 28, 2006

Remarks

Claims 34, 38-39, 43-45, and 48-51 are presented for Examiner Chapman's consideration.

Claims 1-33, 35-37 and 46-47 were previously canceled.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing remarks and the following response is respectfully requested.

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Response to Rejections

By way of the Office Action mailed August 28, 2006, claims 34, 38-39, 43-45, and 48-51 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,193,701 to Van Gompel *et al.* (*Van Gompel*) in view of U.S. Publication Number 2002/0072726 A1 to Mishima *et al.* (*Mishima*). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

The combination of *Van Gompel* and *Mishima* fails to teach or suggest all the claim limitations. Applicants' claim 34 is reproduced below for reference.

34. A disposable absorbent garment, the disposable absorbent garment comprising:

an elastic outer layer having an outer layer perimeter;

an elastic inner layer, wherein the elastic inner layer has an elastic inner layer perimeter and wherein the elastic inner layer defines an opening located in an internal position to the elastic inner layer perimeter; wherein the elastic inner layer perimeter is bonded to the outer layer perimeter with a plurality of ultrasonic, adhesive or thermal bonds; and

an absorbent assembly positioned between the outer layer and the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer.

Claim 34 requires the combination of these 5 components:

1. An elastic inner layer with an opening
2. A topsheet layer of an absorbent assembly
3. A core layer of the absorbent assembly

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4. A barrier layer of the absorbent assembly
5. An elastic outer layer

Fig. 2 of *Van Gompel* is reproduced below and shows that only four of the five components are taught.

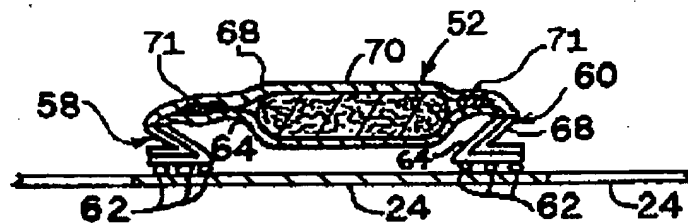


FIG. 2

Specifically, *Van Gompel* teaches:

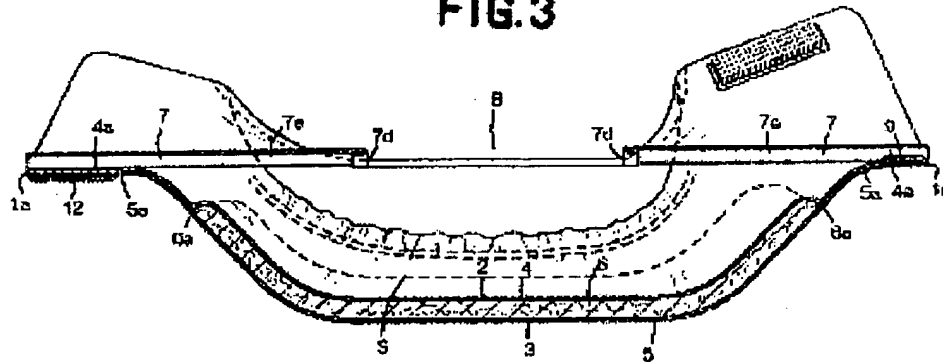
1. A liquid permeable bodyside liner 68 of an absorbent structure 52
2. An absorbent core 70 of the absorbent structure 52
3. An impermeable backsheet 64 of the absorbent structure 52
4. An outercover 24

Therefore, it is clear that *Van Gompel* does not teach the combination of the five elements required by Applicants' claim 34. The elastic inner layer is missing regardless of the Examiner's assertion to the contrary on page 2 of the Office Action. The liquid permeable bodyside liner 68 of *Van Gompel* may be elastic but it is a different element than the elastic inner layer as recited in claim 34.

The Examiner does acknowledge that "Van Gompel does not expressly disclose the elastic inner layer defining an opening." To cure this defect, the Examiner looks to *Mishima*. However, *Mishima* does not teach the five elements either as is evident from Figure 3 of *Mishima* reproduced below.

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FIG. 3



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Therefore, claim 34 is patentably distinct and non-obvious over the combination of *Van Gompel* and *Mishima* for at least these reasons and the rejection of this claim should be withdrawn. Claims 38-39, 43-45, and 48-51 depend from claim 34 and are patentably distinct for at least the same reason and the rejection of these claims should also be withdrawn.

With regard to claim 38, the Examiner states that it would have been obvious "to form the outer layer of Van Gompel liquid impermeable as taught by Mishima since Mishima state at [0056] that the benefit of forming a diaper with such an outer layer is that it has high water resistant properties, high strength and flexibility." However, one skilled in the art would appreciate that "liquid impermeability" has no inherent relationship to strength or flexibility. Therefore, one skilled in the art would not make the proposed modification for either of these reasons. Additionally, as to "water resistant properties," one skilled in the art would not make the proposed modification because *Van Gompel* already provides liquid impermeable backsheet 64. There is no motivation found in either *Van Gompel* or *Mishima* to suggest that two liquid impermeable elements are desirable.

With regard to claim 39, *Van Gompel* does not disclose that the outer layer is liquid permeable. The Examiner cites c. 6, I. 60; c. 7, II. 20-40 for support of this assertion. However, these citations merely describe the materials that may be used to construct the outer layer. There is no teaching as to whether these materials are permeable or impermeable.

For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

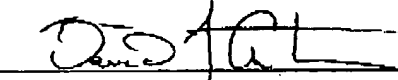
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Respectfully submitted,

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